IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

JUDGMENT

M/s Banswara Syntex Ltd., **VS**. The Customs, Excise Tax Appellate Tribunal (CESTAT) & Ors.

D.B. CENTRAL EXCISE APPEAL NO.21/05
against the order dated 18.01.2005 passed by Customs, Excise & Service Tax Appellate Tribunal (CEAST), New Delhi in E/A No.1014/04-NB(B).

Date of judgment : 1st Nov., 2006

PRESENT

HON'BLE MR. JUSTICE RAJESH BALIA
HON'BLE MR. JUSTICE GOPAL KRISHAN VYAS

Mr. Sanjiv Johari for the appellant.
Mr. Rajesh Joshi for the respondents.

BY THE COURT:-(HON'BLE MR. RAJESH BALIA, J.)

Heard learned counsel for the parties.

While admitting the appeal the following questions were framed as substantial questions of law arising from the order of Customs, Excise & Service Tax Appellate Tribunal (CEAST), New Delhi:-

> "1. Whether the impugned order can be termed as corrigendum rectifying the mistake apparent on the face of record?
>
> 2. Whether the corrigendum of the nature under challenge could be made without notice to the assessee?"

These questions have arisen in the circumstances that the petitioner is engaged in processing of textiles and he also is engaged in processing of textiles as job work. The provisional assessment order was passed by the adjudicating authority for the period March 2001 to February 2002 and the Excise Duty on the basis of provisional assessment was paid which included the modvat credit availed by the assessee.

Thereafter the assessment order was finalised vide order dated 31st Dec., 2002. With the final assessment order two charts were annexed. Chart A showing the excess central Excise Duty paid by the assessee amounting to Rs.11,53,266/- for the period from March 2002 which shows the Duty payable by the assessee was 100% as per Board's circulars dated 19.2.2002 and 1.7.2002 but by way of provisional assessment, the assessee has paid duty at 115%. Simultaneously Chart B shows on the same premise the excess deemed credit amounting to Rs.5,67,368/- availed by the assessee. By adjusting the excess deemed credit availed by the assessee against excess Duty paid by it, the remaining amount was ordered to be refunded.

Thereafter by order dated 25th Feb., 2003, the following order was passed:-

"CENTRAL EXCISE DIVISION :: CHITTORGARH
C.No.V(55)1703/2001/2349 Dated 25/2

CORRIGENDUM

This corrigendum is being issued in

respect of order of finalization of provisional assessment issued under even No.9662 dated 31.12.2002 in case of M/s Banswara Textile Mills Ltd., Banswara for following amendment.

The words and figures mentioned in the second para at page 2 may please be substituted as under:-

"The assessee has paid Central Excise duty in excess on the goods cleared during the period March 2001 to February 2002 amounting to Rs.12,5973/- inclusive of deemed credit availed (As per revised Chart-A) and availed deemed credit in excess amounting to Rs.23,26,626/- (As per revised Chart-B). The assessee is directed to reverse this amount and inform to this office at an early date."

sd/
(M.L. Meena)
Assistant Commissioner

REGISTERED A.D.
M/s Banswara Textile Mills Ltd.,
Dohad Road,
BANSWARA.

Copy to the Superintendent, Central

excise Range, Banswara for information and necessary action. He is requested to again check the figures/dates with related documents submitted by M/s Banswara Textile Mills Ltd. And if there is any discrepancy then inform the undersigned.

ASSISTANT COMMISSIONER"

Along with this order revised Charts A and B were annexed.

It is common ground that the aforesaid order was passed without notice to the assessee.

The assessee challenged this order. The Revenue defended the order inter alia on the ground that this was merely a correction of arithmetic mistake and the increased demand of excess deemed credit raised by the corrigendum was directed to be reversed.

On principle no dispute was raised that mere arithmetic mistake could be corrected and since mere arithmetic mistake do not amount to change in the

assessment of substantively the principles of natural justice were not required to be followed. However, the dispute as to the nature of corrigendum was raised.

A perusal of three orders goes to show that none of the orders of corrigendum and appellate orders shows what was nature of arithmetic mistake which is sought to be corrected by the Assistant Commissioner vide order dated 25th February, 2003. A bald assertion that the amendment resulting in additional demand was a result of arithmetical mistake, without even disclosing what was the arithmetic mistake in the order defies it all logic and demand of a fair procedure. Apparently, such an order results in altering the demand of Duty and creates a demand of Duty instead of original order of refund cannot be termed as not resulting in substantive change in original order labelled as arithmetically incorrect. Moreover, we find that almost every figure in the Revised charts A and B is at variance from the earlier chart annexed with the assessment order without even a whisper that what mistake was sought to be corrected in the orders and what is the source of newly substituted

figure. The ipse dixit that the order was merely to correct the arithmetic mistake cannot be accepted. Such an order resulting in raising a huge demand than what was raised in the final assessment order without disclosing any reason cannot be sustained. Apart from that it being in total breach of principles of natural justice without affording an opportunity of hearing, the order suffers from the vice of non-speaking order.

Accordingly, this appeal is allowed. The order of the Tribunal, Appellate Commissioner as well as of Commissioner (Appeals) and adjudicating authority are set aside. However, it will be open for the adjudicating authority to take proceedings against the assessee as may be permissible under the law after giving an opportunity of hearing to the assessee.

No costs.

[GOPAL KRISHAN VYAS], J. [RAJESH BALIA], J.

babulal/